

B. Decision

I conclude that Georgia's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

II. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

III. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of \$100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because it merely makes federally enforceable existing requirements with which regulated entities must already comply under State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. The requirements being codified today are the result of Florida's voluntary

participation in accordance with RCRA Subtitle C.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of \$100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector because today's action merely codifies an existing State program that EPA previously authorized. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, this codification incorporates into the Code of Federal Regulations Florida's requirements which have already been authorized by EPA under 40 CFR part 271 and, thus, small governments are not subject to any additional significant or unique requirements by virtue of this codification.

IV. Certification Under the Regulatory Flexibility Act

EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. EPA's codification does not impose any additional burdens on these small entities. This is because EPA's codification would simply result in an administrative change, rather than a change in the substantive requirements imposed on small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates "State's" requirements which have been authorized by EPA under 40 CFR part 271 into the Code of Federal

Regulations. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

V. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

VII. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: November 4, 1997.

John H. Hankinson, Jr.,

Regional Administrator.

[FR Doc. 97-30818 Filed 11-21-97; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-5925-3]

The National Priorities List for Uncontrolled Hazardous Waste Sites; Listing and Deletion Policy for Federal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Notice of interim final policy statement.

SUMMARY: The Environmental Protection Agency (EPA) is announcing two interim final policy revisions relating to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which was promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA)). CERCLA requires that the NCP include a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States, and that the list be revised at least annually. The National Priorities List (NPL), which is Appendix B of 40 CFR part 300, constitutes this list.

This document announces an interim final revision to the Agency's policy on placing Federal facility sites on the NPL. For those Federal facility sites already on the NPL, this document describes an interim final policy revision for deleting such sites from the NPL. The interim final policy revisions apply to Federal facility sites that are RCRA-regulated facilities engaged in treatment, storage, or disposal of hazardous waste ("TSDs" under the RCRA program). EPA requests public comments on these interim final policy revisions.

DATES: *Effective date:* These interim final policy revisions are effective November 24, 1997.

Comment date: The EPA will accept comments concerning these interim final policy revisions on or before January 23, 1998.

ADDRESSES: *By Mail:* Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603-9232.

By Federal Express: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to SUPERFUND.DOCKET@EPAMAIL.EPA.GOV. E-mailed comments must be followed up by an original and three copies sent by mail or Federal Express.

FOR FURTHER INFORMATION CONTACT: Seth Thomas Low, Federal Facilities Restoration and Reuse Office, Office of

Solid Waste and Emergency Response (Mail Code 5101), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (202) 260-8692, or the Superfund Hotline, Phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

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I. Introduction

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* (CERCLA or "the Act"), in response to the dangers of uncontrolled or abandoned hazardous waste sites. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (SARA), Pub. L. No. 99-499, 100 Stat. 1613 *et seq.* To implement CERCLA, the Environmental Protection Agency (EPA or "the Agency") promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets forth guidelines and procedures for responding under CERCLA to releases and threatened releases of hazardous substances, pollutants, or contaminants. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

Section 105(a)(8)(A) of CERCLA requires that the NCP include "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable taking into account the potential urgency of such action, for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases. 42 U.S.C. 9601(23). "Remedial action[s]" are those "consistent with permanent remedy taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).

Pursuant to section 105(a)(8)(B) of CERCLA, EPA has promulgated a list of national priorities among the known or threatened releases of hazardous

substances, pollutants, or contaminants throughout the United States. That list, which is Appendix B of 40 CFR part 300, is the National Priorities List (NPL).

CERCLA section 105(a)(8)(B) defines the NPL as a list of "releases" and as a list of the highest priority "facilities." CERCLA section 105(a)(8)(B) also requires that the NPL be revised at least annually. A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). Although Federal facility sites are eligible for the NPL pursuant to 40 CFR 300.425(b)(3), section 111(e)(3) of CERCLA limits the expenditure of Superfund monies at Federally-owned facilities. Federal facility sites also are subject to the requirements of CERCLA section 120, added by SARA.

Three mechanisms for placing sites on the NPL for possible remedial action are included in the NCP at 40 CFR 300.425(c). Under 40 CFR 300.425(c)(1), a site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (HRS), which EPA promulgated as Appendix A of 40 CFR part 300. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL.

Under a second mechanism for adding sites to the NPL, each State may designate a single site as its top priority, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)).

The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

II. Existing Policy for Listing Federal Facility Sites on the NPL

On March 13, 1989 (54 FR 10520), the Agency adopted a policy for listing Federal facility sites that are eligible for the NPL, even if they are also subject to the corrective action authorities of Subtitle C of RCRA.

III. Interim Final Revisions to Policy for Listing Federal Facility Sites on the NPL

A. Purpose of Today's Document

This document announces an interim final revision to the Agency's policy on placing Federal facility sites on the NPL. This document also announces an interim final policy revision for deleting Federal facility sites from the NPL. See discussion under section IV, below. Under current EPA policy, the Agency does not consider whether a Federal facility site is also subject to RCRA cleanup authorities in determining whether to place the site on the NPL. Likewise, EPA does not currently consider RCRA cleanup authorities when deciding whether to delete a Federal facility site from the NPL. With today's document, EPA is revising these policies to allow consideration of RCRA cleanup authorities in making listing and deletion decisions for Federal facility sites. EPA requests public comments on these interim final policy revisions.

B. RCRA/NPL Deferral Policy

In the preamble to the final rule promulgating the initial NPL (48 FR 40662, September 8, 1983), EPA announced the RCRA/NPL deferral policy,¹ which provided that "where a site consists of regulated units of a RCRA facility operating pursuant to a permit or interim status, it will not be included on the NPL but will instead be addressed under the authorities of RCRA." Since that time, EPA has amended the RCRA/NPL deferral policy on a number of occasions.

On June 10, 1986 (51 FR 21057), EPA announced several components of a policy for placing RCRA-regulated sites on the NPL, but made clear that the policy applied only to non-Federal sites. The policy stated that the listing of non-

Federal sites with releases that can be addressed under RCRA Subtitle C corrective action authorities generally would be deferred. However, EPA would continue to list certain RCRA facilities at which Subtitle C corrective action authorities are available if they had an HRS score of 28.50 or greater and fell within at least one of the following categories: (1) facilities owned by persons who have demonstrated an inability to finance a cleanup as evidenced by their invocation of the bankruptcy laws; (2) facilities that have lost authorization to operate, or for which there are additional indications that the owner or operator will be unwilling to undertake corrective action; or (3) facilities, analyzed on a case-by-case basis, whose owners or operators have a clear history of unwillingness to undertake corrective action. EPA noted that it would consider at a later date whether this policy for deferring non-Federal RCRA regulated sites from the NPL should apply to Federal facilities.

As noted in section II above, on March 13, 1989 the Agency adopted a policy for listing Federal facility sites that are eligible for the NPL, even if they are also subject to the corrective action authorities of RCRA Subtitle C.

C. Rationale For Revising the Policy For Placing Federal Facilities Sites on the NPL

Recently Congress amended CERCLA section 120(d) to expressly grant EPA the discretion to consider non-CERCLA cleanup authorities when making a listing determination for Federal facility sites. Section 120(d), as amended by section 330 of the Defense Authorization Act of FY 97, now provides that:

It shall be an appropriate factor to be taken into consideration for the purposes of section 105(a)(8)(A) that the head of the department, agency, or instrumentality that owns or operates a facility has arranged with the Administrator or appropriate State authorities to respond appropriately, under authority of a law other than this Act [CERCLA], to a release or threatened release of a hazardous substance. [CERCLA section 120(d)(2)(B)]

EPA believes that amended section 120(d) provides EPA with clear legal authority to consider cleanup under RCRA Subtitle C corrective action when making a listing decision for Federal facility sites. The legislative history of this provision supports EPA's view. The conference committee report states that the revised section 120(d) gives EPA "the discretion to withhold National Priorities List designation of a Federal facility cleanup action if the site is

already subject to an approved Federal or State cleanup plan." H.R. Conf. Rep. No. 724, 104th Cong., 2d Sess. 724 (1996). In light of this amendment to CERCLA and the ongoing Agency efforts for administrative reforms to CERCLA that allow greater flexibility to address Superfund sites, EPA is revising its listing policy for Federal facility sites. The Agency believes that this revision may free CERCLA oversight resources for use in situations where another authority is not available.

D. Criteria for RCRA/NPL Deferral of Federal Facility Sites

In today's document, EPA sets forth the criteria the Agency will consider in determining when a Federal facility site may not be placed on the NPL because the cleanup is being conducted pursuant to RCRA Subtitle C corrective action authorities ("RCRA/NPL deferral for Federal facility sites"). A site should satisfy all of these criteria to be eligible for deferral. Where there is uncertainty as to whether the criteria have been met, deferral generally will be inappropriate. The criteria are the following:

1. The CERCLA site is currently being addressed by RCRA Subtitle C corrective action authorities under an existing enforceable order or permit containing corrective action provisions.
2. The response under RCRA is progressing adequately.
3. The state and community support deferral of NPL listing.

E. Discussion of Each Criterion

The first criterion states that the site is being addressed by RCRA corrective action authorities under an existing order or permit. The criterion specifies that the requirement applies to sites as defined by CERCLA, and that the authority addressing the site is RCRA Subtitle C corrective action.

Under the first criterion, corrective action orders or permits issued by EPA or an authorized state program that address corrective action at the facility must generally be in place as a condition for deferral.² This criterion serves as an objective indicator that contamination at a site is addressable under RCRA corrective action authorities. The term "addressable" in this context means that a CERCLA site is fully remediable by a permit or order with a schedule of compliance, whether or not actual cleanup has begun. Corrective action permits or orders should require the cleanup of all releases at the CERCLA site (e.g., if

¹ The terms *deferral* and *deletion* as used in the context of the NPL refer to the following: Deferral refers to the decision not to list a site on the NPL, or not retain a site on the NPL, to allow another authority (RCRA corrective action in this case) to handle the remediation of the site in lieu of CERCLA. Deletion is the act of taking a site off the NPL, which may occur because cleanup at a site is complete or because another authority (such as RCRA corrective action) can be used to bring about remediation at the site and further CERCLA action is not needed.

² It should be noted that the RCRA/NPL deferral does not relieve a Federal facility from the CERCLA section 120(d) requirement to conduct preliminary assessments.

contamination stemming from the CERCLA "release" extends beyond the boundaries of a particular RCRA facility, such releases must be addressable under RCRA sections 3004(v) and 3008(h) or other enforcement authority under RCRA).³ Corrective action orders or permits which do not require cleanup of all releases at the CERCLA site should be modified to address such releases; otherwise the CERCLA site would not be a candidate for deferral.

Under the second criterion, EPA evaluates whether response under RCRA is progressing adequately. Under this criterion, noncompliance with corrective action orders or permits generally would be regarded as an indicator that response under RCRA is not progressing adequately. However, even if a Federal facility site (*i.e.*, the owner/operator) is in compliance with a corrective action order or permit, EPA may determine that response is not progressing adequately based upon other factors. For example, the Agency may consider whether there has been a history of protracted negotiations due primarily to an uncooperative owner or operator.

Under the third criterion, EPA evaluates whether the affected state and community where the Federal facility site is located support deferral of the NPL listing of such site. Under this

criterion, EPA expects the state and Federal facility which are interested in NPL deferral to take appropriate steps to inform the affected community and other affected parties (*e.g.*, communities downstream from the site, Natural Resource Trustees, etc.), as appropriate, of such interest and seek community participation on such issue. EPA believes that community participation will be facilitated by the establishment of Restoration Advisory Boards or Site Specific Advisory Boards by the affected Federal agencies in conjunction with the state. The state and Federal facility which are interested in NPL deferral should also document all of their interactions with the community and inform EPA of any possible opposition to NPL deferral of the site.

IV. Policy for Deleting Sites From the NPL Based Upon RCRA Deferral

A. RCRA Deletion Policy

On March 20, 1995 (60 FR 14641), the Agency announced the adoption of a policy for deleting RCRA facilities from the NPL before a cleanup is complete, if the site is being, or will be, adequately addressed by the RCRA corrective action program, provided certain criteria were met. The Agency based its action on the goals of freeing CERCLA oversight resources for sites where another authority is not available and avoiding possible duplication of effort. The Agency made clear that such policy does not pertain to Federal facility sites, even if such facilities are also subject to the corrective action authorities of Subtitle C of RCRA.

B. Revision to RCRA Deletion Policy

This document announces that EPA is revising the RCRA deletion policy to also be applicable to Federal facility sites. As noted in section III. C, above

CERCLA section 120(d) was amended to expressly authorize EPA to consider other cleanup authorities in making Federal facility site listing decisions. In light of EPA's express discretion under section 120(d), EPA believes that it is also now appropriate to apply the Agency's RCRA deletion policy to Federal facility sites on the NPL. The first criterion under the RCRA deletion policy is that a site be eligible for RCRA deferral under EPA's current RCRA/NPL deferral policy. Until EPA revised the 1989 Federal facility site listing policy no Federal facility could satisfy the RCRA deletion policy criteria.

The Agency believes that revising the RCRA deletion policy to be applicable to Federal facility sites is consistent with CERCLA section 120(d), as amended, and the ongoing Agency efforts for administrative reforms to CERCLA that allow greater flexibility to address Superfund sites. The Agency believes that this revision may free CERCLA oversight resources for use in situations where another authority is not available. By this interim final revision, the criteria and process stated in the March 20, 1995 RCRA deletion policy are now applicable for deleting Federal facility sites from the NPL.

[Notice: This document does not represent final agency action, but is intended solely as guidance. It does not create any legal obligations. EPA officials may decide to follow the policies discussed in this document, or to act at variance with such policies, based on an analysis of specific site circumstances.]

Dated: November 13, 1997.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 97-30518 Filed 11-21-97; 8:45 am]

BILLING CODE 6560-50-P

³ Under CERCLA, the term *facility* is meant to be synonymous with "site" or "release" and is not meant to suggest that the listing is geographically defined (56 FR 5600, February 11, 1991). The size or extent of a facility listed on the NPL may extend to those areas where the contamination has "come to be located." (See CERCLA section 101(9)). On the other hand, a "facility" as defined under RCRA is "all contiguous property under the control of the owner or operator seeking a Subtitle C permit" (58 FR 8664, February 16, 1993). Thus, a RCRA site relates more to property boundaries, and a CERCLA site/facility/release includes contamination irrespective of RCRA facility boundaries.